IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.189 OF 2001

Sukumar Raju Mandal
r/o Agashi, Kumbharwada,
Tal.:Vasai, Thane
Now in Yerawada Jail, Pune ... Appellant

V/s.

The State of Maharashtra ... Respondent

a/w

CRIMINAL APPEAL NO.220 OF 2001

Vikas Singh Sapan Singh
Yerawada Central Prison, Pune ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.S.M. Oak, Advocate appointed for Appellants
Mrs.V.R. Bhonsale, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **APRIL 5, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. These two appeals are directed against the judgment and order of the Sessions Judge in Sessions Case No.123 of 1999 in which the appellants faced trial for the offences punishable under sections 302 r/w 34 and 307 r/w 34 of the Indian Penal Code.

2. According to the Prosecution, Dinesh, the victim

Krishna and the two Appellants were employees of Hotel Negus. They resided in the hotel premises. Dinesh had observed the two accused strangulating the deceased Krishna in the hotel premises some time between 12 midnight and 4.30am. Dinesh had fled from the scene of offence after locking the door of the hotel and had informed PW1, who was conducting the hotel, PW4, the sister of the owner of the hotel and PW5, the owner of the hotel that the Appellants had tried to strangulate him (Dinesh). PW5 accompanied Dinesh back to the hotel. PW1 Nityanand, conductor of the hotel also arrived at the hotel. After opening the bolt of the door from outside, they found that the door was locked internally. PW1 and PW5 directed the accused to open the door. The accused agreed to open the door only in the presence of the police. The police thereafter were informed and they arrived on the scene. The accused opened the door and surrendered to the police. The dead body of Krishna was found lying on a bench in the premises of the hotel. The accused were arrested and charged under sections 302 r/w 34 and 307 r/w 34 of the Indian Penal Code.

3. The hollowness of the prosecution’s case is very apparent from a bare perusal of the deposition of the witnesses. Apart from this, the prosecution has not examined either the complainant or the Investigating

Officer. Both these persons were absconding, according to the prosecution and, therefore, it was not possible for their depositions to be recorded before the Sessions Court. The Investigating Officer had been released on bail after being trapped by the Anti-Corruption Bureau while accepting a bribe. He was absconding since then. There is nothing on record to show what efforts were made to secure the presence of the complainant Dinesh, who was allegedly an eye-witness.

4. The evidence on record indicates that Dinesh had informed PW1, PW4 and PW6 that the Appellants had attempted to strangulate him. PW1, Nityanand, has stated that Dinesh had visited his place at Vasai early in the morning of 26.4.1997 in a frightened state and had narrated to him that the accused had tried to strangulate him. PW4, has stated in her deposition that when Dinesh arrived at her residence at around 4 - 4.30 in the morning on 26.4.1997, he said that he was being assaulted by the two bengali cooks and that he had run away after closing the hotel door from the outside, locking the cooks inside the premises. The same story is repeated by PW6, who has stated that Dinesh, in a frightened condition had informed him that the accused had tried to kill him by strangulating him. PW1 and PW6 have deposed that when the door of the hotel premises

was opened after the arrival of the police on the scene, they saw the dead body of the victim was lying on a bench. There was a swelling on the throat. The Doctor, PW3, has opined that the death was due to asphyxia due to strangulation with a soft material. PW5, the police constable, who accompanied PW1 and Dinesh to the hotel has stated in his deposition that Dinesh had told him that both the accused had attempted to strangulate him at 4 am or 4.30 am, and that he saved himself by bolting the hotel door from the outside.

5. A close scrutiny of the evidence on record would indicate that not a single witness has deposed to the fact that Dinesh had informed them that the accused had killed Krishna. Nor is there any account as to how the accused could be linked to the death of Krishna. The Sessions Judge, in our opinion contrary to the canons of criminal jurisprudence, expected the accused to explain how Krishna had expired. The Sessions Judge had observed that the burden shifts on the accused to explain the death of Krishna. Merely because Krishna was found dead in the hotel premises and the accused were on the same premises, it cannot necessarily lead to the inference that the accused were responsible for the death of Krishna. The conduct of the accused, of insisting that the door of the hotel premises would be

opened by them only in the presence of the police belies the prosecution story. The normal course that a person who has committed a crime would adopt would be to flee from the scene of offence rather than to remain in the same place till the police arrived. In fact, both the accused in their statements recorded under section 313 of the Criminal Procedure Code have stated that Krishna and Dinesh used to sleep in the hall of the hotel premises. They were accustomed to drinking liquor and gambling which would lead to frequent quarrels between them. On the night of 25/26.4.1997 both the accused entered the hall from the staff room where they usually slept, when they heard Krishna and Dinesh quarrelling. They found Krishna lying on a bench and Dinesh was standing by his side and had caught hold of him. On seeing the accused, Dinesh ran away and bolted the door from the outside. The accused attempted to awake Krishna who did not respond. These statements made by the accused, coupled with the fact that there is no eye-witness nor any circumstantial evidence pointing to the guilt of the accused, indicate that the prosecution case has not been established. Most significantly none of the witnesses have testified to the fact that Dinesh had revealed to them that the Accused had in fact killed Krishna.

6. We are convinced that the judgment of the Sessions Court must be set aside. The Appeals are, therefore, allowed. The accused be released forthwith, if not otherwise required in law.

7. The accused were represented before us by an Advocate appointed. The Advocate has taken adequate efforts to put the entire case of the accused before us. We, therefore, quantify the fees payable to the Advocate appointed for the appellants at Rs.1,000/-.